

**BUNDY VARIANCE REQUEST  
FOR A FUTURE AMENDED PLAT OF HAMILTON HEIGHTS, BLOCK 17, LOT 2A**

**STAFF REPORT FOR PLANNING BOARD**

**CASE PLANNER:** Tristan Riddell *TR*

**REVIEWED &  
APPROVED BY:** Renee Van Hoven *RV*

**PUBLIC HEARINGS/  
MEETINGS/DEADLINES:**

RCPB Public Hearing:	May 17, 2006
Deadline for PB recommendation to BCC:	June 21, 2006
BCC meeting date:	9:00 a.m. June 29, 2006
Deadline for BCC action (35 working days):	July 7, 2006

**APPLICANT:** Russell Bundy  
807 Honeyhouse Lane  
Corvallis, MT 59828

**REPRESENTATIVE:** Steve Powell with Powell Surveying, 363-6389

**LOCATION OF  
REQUEST:** The property is located approximately two miles southeast of  
Corvallis near the intersection of Honeyhouse Lane and Warbler  
Lane. (Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Hamilton Heights, Block 17, Lot 2A, located in Section 9, T6N,  
R20W, P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The variance application was determined sufficient on April 20, 2006.  
Interested agencies were notified of the variance. Agency comments  
received by the Planning Department and not included in the  
application packet is Exhibit A-1 of the staff report.

**LEGAL  
NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on  
Tuesday, May 2, 2006. Notice of the project was posted on the  
property. Property owners adjacent to the property were notified of  
the variance by certified mail postmarked May 2, 2006. No public  
comments on the variance have been received to date.

**DEVELOPMENT  
PATTERN:**

Subject property	Residential
North	Residential
South	Large lot residential
East	Large lot residential
West	Residential

## RAVALLI COUNTY PLANNING BOARD

MAY 17, 2006

### BUNDY VARIANCE REQUEST FOR A FUTURE AMENDED PLAT OF HAMILTON HEIGHTS, BLOCK 17, LOT 2A

#### I. RECOMMENDED MOTION

That the variance request from Sections 5-4-5(d) of the Ravalli County Subdivision Regulations, which requires the applicant to pay the pro-rata share of the cost to improve the portion of Warbler Lane accessing the subdivision, be **denied**, based on the findings of fact and conclusions of law in the staff report.

#### II. INTRODUCTION

At the April 19, 2006 Planning Board Meeting, the Planning Board recommended approval of the Hamilton Heights, Block 17, Lot 2A, AP (Exhibit B: April 19, 2006 Planning Board Meeting Minutes). There was discussion about the pro-rata payment on Warbler Lane and whether or not it should be required because Warbler Lane serves Lot 2A-3, which has an existing home. The applicant has since decided to submit a variance request from the requirement that pro-rata be paid on Warbler Lane.

*Staff is recommending denial of the variance request.*



### **III. VARIANCE REQUEST**

The applicant has requested a variance from Sections 5-4-5 (d) of the Ravalli County Subdivision Regulations which requires the applicant to pay a pro-rata share of the cost to improve the portion of Warbler Lane leading to the subdivision.

#### **Compliance with Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### **Findings of Fact:**

1. The existing house on proposed Lot 2A-3 currently accesses off Honeyhouse Lane from a shared driveway with proposed Lot 2A-1. Lot 2A-3 is proposed to access off Warbler Lane from a new approach. This proposal will add an estimated 8 trips per day to Warbler Lane.
2. The Ravalli County Subdivision Regulations require the developer to pay the pro-rated share of the cost to improve the portion of Warbler Lane leading to Lot 2A-3 to meet County Standards. The amount of the pro-rata share is not known. The applicant is requesting a variance and is not proposing mitigation.
3. The pro-rata share will be used to improve roads within the grader district to meet County Standards. The standards were designed to promote public health and safety.
4. In an email dated April 28, 2006, the Ravalli County Road and Bridge Department stated they did not support the variance request and recommended that the applicant pay the pro-rata share. (Exhibit A-1)

##### **Conclusions of Law:**

1. If this variance is granted, potential impacts of this subdivision to public health and safety will not be mitigated.
2. The Road and Bridge Department does not support this variance.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

##### **Findings of Fact:**

1. The dwelling on proposed Lot 2A-3 has been on the property approximately 11 years.
2. The proposal is to change the access to Lot 2A-3 from Honeyhouse Lane to Warbler Lane.

##### **Conclusion of Law:**

The conditions upon which the variance is requested are unique to the subject property.

**C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

##### **Finding of Fact:**

Neither topography or parcel shape play a role in determining the applicants ability to pay a pro-rata share.

##### **Conclusion of Law:**

No physical or topographic limitations have been identified that would restrict the applicant from paying a pro-rata share on Warbler Lane.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not within a Zoning District.
2. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

**Countywide Policy 4.2:** Consider the cumulative impacts of development.

- There will be increased impacts to Warbler Lane with the construction of a new approach to Lot 2A-3. The applicant is not proposing mitigation.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

- The Subdivisions Regulations require the applicant to pay a pro-rata share for the new access onto Warbler Lane. The applicant is requesting a variance from this requirement to not have to pay pro-rata for the existing dwelling which will be using a new access onto Warbler Lane. The pro-rata share associated with Warbler Lane would be used to improve and maintain existing infrastructure within the grader district.

Conclusions of Law:

1. Zoning does not apply to this property.
2. The Growth Policy does not support granting this variance request.

**E. The variance will not cause a substantial increase in public costs.**

Finding of Fact:

If this variance is granted, the costs of improving and maintaining County roads throughout the grader district, which Warbler Lane is within, will not be mitigated. The public will not be relieved of the additional costs this proposed subdivision will have on the road system.

Conclusion of Law:

There will be substantial costs to the public associated with the granting of the variance request.

# EXHIBIT A-1

**Tristan Riddell**

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**From:** David Ohnstad  
**Sent:** Friday, April 28, 2006 9:28 AM  
**To:** Tristan Riddell  
**Subject:** RE: Hamilton Heights, Block 17, Lot 2A Variance Request

If a new access has been created, even to serve an existing residence, pro-rata assessments on Warbler Lane would be appropriate.

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**From:** Tristan Riddell  
**Sent:** Thursday, April 27, 2006 10:05 AM  
**To:** David Ohnstad  
**Subject:** Hamilton Heights, Block 17, Lot 2A Variance Request

David-

The Hamilton Heights, Block 17, Lot 2A minor subdivision is scheduled for a Planning Board hearing on May 17, 2006 for a variance request. The variance request is from paying pro-rata on Warbler Lane for the existing house on Lot 2A-3. The applicant will pay a pro-rata share for the new dwelling on Lot 2A-2, but feels that since the home on Lot 2A-3 has been there for approximately 11 years the variance should be granted. The existing homes on Lots 2A-1 and 2A-3 are currently accessed from a driveway off Honeyhouse Lane. Lot 2A-2 will access from a new approach which was approved in November of 2005. Lot 2A-3 is planned to be accessed off Warbler Lane.

Please provide any comments and suggestions as I would like to have something from your department to include in my Staff Report. Your opinion would help staff determine whether to approve or disapprove the variance request.

Thanks.

Tristan Riddell  
Ravalli County Planning Department  
215 S. 4th St., Suite F  
Hamilton, MT 59840  
Phone (406) 375-6530  
Fax (406) 375-6531  
[triddell@ravallicounty.mt.gov](mailto:triddell@ravallicounty.mt.gov)

5/9/2006





# EXHIBIT B-1

## Ravalli County Planning Board Meeting Minutes for April 19, 2006

3:00 p.m.

Commissioners Meeting Room, 215 S. 4<sup>th</sup> Street, Hamilton, Montana

### Public Hearing

Hamilton Heights Block 17, Lot 2A, AP (Bundy) Minor Subdivision

*This is a summary of the meeting, not a verbatim transcript. An audiotape of the meeting may be purchased from the Planning Department for \$10.00.*

#### 1. Call to order

Dan called the meeting to order at 3:05 PM.

#### 2. Roll Call (See Attachment A, Roll Call Sheet)

##### (A) Members

Ben Hillicoss (present)  
Dan Huls (present)  
JR Iman (present)  
Frankie Laible (present)  
Roger Linhart (present)  
Chip Pigman (present)  
Les Rutledge (absent – excused)  
Lori Schallenberger (present)  
Gary Zebrowski (absent – excused)

##### (B) Staff

Karen Hughes  
Tristan Riddell  
Renee Van Hoven  
Jennifer De Groot

#### 3. Approval of Minutes:

Dan asked if there were any corrections or additions to the minutes from April 5, 2006. Ben said he would like to add a comment he made about parks. Dan said that once Ben submits his changes, the minutes will be approved.

#### 4. Amendments to the Agenda

There were none.

#### 5. Correspondence

There was none.

6. **Disclosure of Possible/Perceived Conflicts**

There were none.

7. **Public Hearing**

(A) **Hamilton Heights Block 17, Lot 2A, AP (Bundy) Minor Subdivision**

- (i) Staff Report on the Subdivision Proposal: **Tristan Riddell** gave a PowerPoint presentation. He gave an overview of the proposal and stated Staff recommended conditional approval of the subdivision. He entered the Staff Report into the record. (See Attachment B, Hamilton Heights, Block 17, Lot 2A, AP (Bundy) Staff Report)

- (ii) Three Minute Rule Waivers

There were none.

- (iii) Public Comment on the Subdivision

- (a) Persons in Favor

**Steve Powell** of Powell Surveying said that the Bundy family wants to create a new lot for their grandchildren. A new road approach off Honeyhouse Lane has been approved by the Road Department. He said an irrigation easement will be approved by Daly Ditches as soon as he provides an irrigation plan and \$100. He asked that contributions to the school and fire districts be required for the proposed lot without an existing structure.

**Mrs. Russell Bundy & Sherry Bundy** said that they want to add another house to the land for grandchildren. They noted that they would like to keep the land in the family.

- (b) Persons Opposed

There were none.

- (c) Rebuttal

There was none.

- (d) Close: Public Comment

- (iv) Board Deliberation on the Subdivision Proposal

- (a) Board discussion and questions

**Ben** asked how long the existing houses have been there.

**Mrs. Russell Bundy** said that the homes on the parcel are seventeen and eleven years old. She said a modular home was added three years ago after a Boundary Line Relocation.

**JR Iman** asked if the irrigation easement serviced all four of the lots and if they needed to extend the easement to the boundary of Lot 2A-2.

**Steve Powell** said the easement could be moved to provide access to Lot 2A-2 and Lot 1-A. He mentioned that the irrigation might possibly be moved underground.

**Chip** said the letter from Corvallis Rural Fire District required impact fees to be paid prior to final plat approval. He said he researched Senate Bill 185 and it required impact fees to be paid only after building or septic permits are issued.

**Karen** explained that the County considers donations to the Fire District to be contributions and not impact fees and they can be required as a mitigating condition of preliminary plat approval. She noted that the Planning Board can recommend different conditions.

**Chip** recommended that the Corvallis Fire District change their terminology in their letters or that the Planning Board treat impact fees lawfully.

**Lori** motioned to approve the subdivision amending Conditions 4 and 5 of the Staff Report, so that the contributions are paid upon first conveyance.

**Frankie** added that the Bundys should make contributions for the new lot only.

**Lori** said the contributions should be made for Lot 2A-2 only and added the stipulation that the irrigation easement extend to the boundary between Lot 2A-2 and Lot 1A.

**Frankie** seconded the motion.

**Steve** agreed to a \$250.00 donation to the Corvallis School District.

**JR** indicated he thought the applicant should not have to pay pro-rata for the new access off Warbler Lane.

**Renee** said that if Lot 2A-3 was accessed off Warbler Lane, according to the subdivision regulations, they would have to pay pro-rata for the Lane. If Lot 2A-3 was accessed off Honeyhouse Lane, the driveway would then become a road because it serves two parcels. She said the Bundys would need to apply for a variance if they did not want to pave the new road off Honeyhouse Lane.

**Steve** said he did not request a variance and explained that paying pro-rata for access off Warbler Lane was less expensive than building a road to standard.

**Frankie** asked if the Board could offer a variance if the applicant had not already applied for one.

**Renee** said variances have to be applied for first and need proper legal notification.

**Karen** noted variances can be applied for before, during, or after subdivision review. However, she said the variance request must come before the Board

again and the Board cannot grant approval to a variance before it returns for deliberation.

**JR** entered into the record an opinion of the Board that if an approach is approved to access Lot 2A-3 off Warbler Lane, a variance from paying pro-rata should be granted.

**Lori** asked why the Bundys could not use a family exemption.

**Steve** answered that the land was within the Hamilton Heights subdivision and was not eligible for a family transfer.

The Board questioned how to deal with the timing of the variance and subdivision.

**Karen** said the Board could hold the matter until they received the variance or they could vote on the subdivision now.

**Steve** agreed to wait until the variance was approved to go before the Board of County Commissioners.

**Ben** asked why three houses and one trailer were on one lot without having applied for a subdivision.

**Steve** said that the dwellings were added before the present interpretation of law, which requires subdivision. He said that all the dwellings have proper septic permits.

The Board tabled action on the variance issue until the May 17, 2006 meeting.

(b) Board action

(1) Review of the Subdivision Proposal against the Six Criteria

The Board did not review the Six Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-0) to approve the Subdivision. (See Attachment C, Hamilton Heights Block 17, Lot 2A, AP Vote Sheet)

8. **Close Public Hearing**

9. **Communications from Staff**

**Karen** said that the Planning Department Budget Hearing was changed to May 3, 2006 at 9:00 a.m. She also invited Board members to attend a public meeting on May 3, 2006 at 2:00 p.m. to hear the results of the Highway 93 South Corridor Public Meetings and ideas for implementation. She said that the Park Board is meeting with Planning Staff to work on the Master Park Plan, specifically a mapping exercise. **Ben** said he would like to attend the Park Board meeting once the date is rescheduled.

**Dan** said that the Right to Farm & Ranch Board will have a meeting on May 25, 2005 at 7:00 p.m. to discuss land-use planning tools. He invited the Planning Board to attend.

#### 10. Communications from Public

There were none.

#### 11. Communications from Board

**Dan** said the Board was supposed to discuss an amendment to the Growth Policy, but since Gary Zebrowski was not present, the Board would put this on hold.

**Ben** said that three Board members met for a Land Use Sub-Committee meeting. They discussed the Sub-Committee's mission and goals and identified three items on which to work:

- (1) Understanding and helping Planning Staff update the subdivision regulations,
- (2) Identifying other planning tools the Board could use (such as the Tim Davis handout), and
- (3) Picking an area within the County and seeing what the Sub-Committee could do with it, relative to zoning and density.

**Lori** asked if the Board or Staff had heard anything from the Road Supervisor about pro-rata.

**Karen** said Staff had a map with the thirteen proposed pro-rata districts.

(**Renee** brought in the proposed pro-rata map and displayed it for the Board.)

**Frankie** said the map does not fix the problem.

**Karen** said the proposal came from the Road Department. She said the current issue is fixing nexus, not proportionality.

**Lori** stated she was frustrated with the Board of County Commissioners after attending a meeting that the Planning Board requested. She said the Commissioners deferred to Dave Ohnstad of the Road Department and barely gave Planning Board members the opportunity to speak.

**Karen** said the proposed pro-rata map is just a rough draft and is open to comments.

**Ben** commented that he did not like the proposal. **Dan** asked if the pro-rata district map is available electronically. He suggested taking a digital photo of it and emailing it to Board members. **Ben** said the pro-rata map does not look like he thought it would. He recommended giving everyone a base map and crayons to make their own version.

**Lori** said James McCubbin was concerned at the Planning Board meeting about the County getting sued over pro-rata, but at the meeting before the Board of County Commissioners, he said it was not likely. She asked how much pro-rata typically costs and how likely it was that the County would be sued.

**Renee** said pro-rata fees vary.

**Chip** said that if there was a lawsuit against the County and the plaintiff won, the County might have to pay back all the pro-rata fees collected. He said a similar situation occurred in Bozeman.

**JR** said that under state law, the money collected through pro-rata has to be spent on that road. He said that if it is not spent on the road within seven years, the County has to refund the money. He said a similar situation recently happened in Missoula.

**Karen** said that the pro-rata fees are not technically impact fees. She said that Tischler, an impact fee consultant, has stated that pro-rata fees should remain separate from other impact fees.

**Chip** said that the fact that there are so many different views on pro-rata from the Board means the County has a high likelihood of being sued.

**Lori** recommended moving on the issue now in order to avoid being sued.

**Karen** said a number of road issues were put on hold because the Interim Zoning was pushed forward. She said that road issues, including pro-rata and engineering fees for road reviews, would be addressed soon by the Board of County Commissioners. She thought they might be waiting until Dave Ohnstad returns from vacation.

**Ben** motioned that the Board send Lori to go to the Board of County Commissioners to further address road issues.

**Chip** seconded the motion.

The vote was called; the members voted (7-0) to approve sending **Lori** to speak with the Board of County Commissioners.

**Chip** said he was disappointed that the Planning Board was cut out of the Interim Zoning process.

**Ben** agreed, but added that the Staff did a good job with the documents and he did not have large problems with it.

**Frankie** said the Board discussed interim zoning two years ago, but it never went anywhere until it became a crisis situation.

**Ben** said it is likely that the same thing could happen with general zoning. The Planning Board has offered help, but he has not heard a response from the Board of County Commissioners.

In response to concerns expressed about the role of the Planning Board, **Karen** suggested the Board speak with the Board of County Commissioners. She commented that the Planning Board is required to be involved with creation of permanent zoning.

**Frankie** said she had been attending a streamside setback group and asked about the process of implementing the setbacks.

**Karen** said it will depend on how it is done, but most likely the issue will have to go through the Planning Board. She noted that Staff is staying involved with this project.

**Dan** said he hoped the setbacks would affect structures and subdivisions.

**Ben** said Gary Zebrowski was going to offer to help Karen and Staff update the subdivision regulations.

**Chip** said zoning and land use ideas should come from the bottom-up.

**Lori** said she was disappointed with the way the landowners were skimmed over during the US Highway 93 Corridor meetings. She recommended starting with the landowners and asking them their opinions.

**12. New Business**

There was none.

**13. Old Business**

There was none.

**14. Next Regularly Scheduled Meeting:** May 3, 2006 at 7:00 p.m.

(A) Mountain View Orchards, Block 12, Lot B, AP (Zech) Minor Subdivision – Second Public Hearing

**15. Adjournment**

**Dan** adjourned the meeting at 3:57 p.m.

